

REMARKS

submitted September 2007

[001] This is in response to the Office Action dated  
31 May 2007.

[002] Amendments

(None at this time)

[003] Protest re piecemeal examination

The PTO has now, yet again, in this case, introduced a fresh rejection, based on new prior art. Again, we can see no reason why this prior art could not have been cited right at the start of examination. This one-thing-after-another approach to examination causes much unnecessary expense, and is not in the best traditions of the PTO.

[004] Rej'n of claim 1 under 35.USC.103, Tutelian ivo Weaver

The PTO bases its rejection of claim 1 on the proposition that everything about the apparatus disclosed in Tutelian falls within the scope of claim 1, apart from the feature that the floors of the cages are made of plastic.

We feel that this basic proposition is mistaken. It is our position that claim 1 is distinguished from Tutelian by some of

the other features recited in claim 1.

First, we look at claim 1 as to what exactly claim 1 defines as a "cage". Clause [2] of claim 1 requires that the apparatus must include a plurality of separate individual cages. In other words, the "cage" must be something of which there is more than one. In order for the Tutelian apparatus to be regarded as falling within the scope of claim 1, we must be able to identify something, in Tutelian, as an "apparatus" that comprises a plurality of separate cages.

So we have to consider what, in Tutelian, the skilled person would or might identify as the "plurality of separate individual cages". We note that, in claim 1, (clause [7]) each one of the plurality of separate individual cages must be a stand-alone structure, and that each individual cage must be physically capable of being lifted, with its containment of birds, onto the truck, as a unit.

So, what, in Tutelian, would the skilled person recognise as falling within the scope of those words? In short: what, in Tutelian, would the skilled persons regard as the required separate individual cages?

[005] The O/A provides little assistance as to what the PTO is regarding as the things in Tutelian that the skilled persons will identify as the "separate individual cages" of our claim. All the O/A suggests is that the things the PTO is identifying as our claim 1 "cages", in Tutelian, are the cages 31. The PTO seems to have forgotten that each one of our individual cages must be physically capable of being lifted onto the truck, as a unit, with its birds contained therein. Clearly, the cages 31 cannot be said to fall within the scope of those words.

We might stretch a point, and concede that Tutelian's whole assembly 10 might be capable of being lifted onto the truck, as a unit -- although Tutelian does not say that that is so. But claim 1 calls for the individual cages, i.e each one of the plurality, to be liftable onto the truck.

The thing Tutelian calls a "cage", item 31, might possibly be a candidate for the thing we call a "tray chamber", in our claim 1. But the Tutelian cage 31, despite its being called a cage, in fact cannot be regarded as a stand-alone self-contained structure, which is what we require of *the cage*, as we define it in claim 1.

[006] Again, the cage 31 in Tutelian cannot be regarded as a stand-alone item. The skilled person would find this to be perfectly clear from a perusal of Tutelian's drawings, within the context provided by lines 18-48 of col 4 of Tutelian.

The point is made even more clear in lines 56-58 of column 4, where Tutelian says: *Each panel thus acts as the floor of one poultry cage and the ceiling 34 for the poultry cage immediately below it . . .* It could hardly be more clear that the cages 31 in Tutelian cannot be regarded, by the skilled persons, each as a stand-alone self-contained structure.

[007] From the above, we feel it is perfectly clear that claim 1 is distinguished from Tutelian by the fact that claim 1 calls for a plurality of individual separate stand-alone cages. The PTO says the skilled persons would identify Tutelian's cage 31 as the stand-alone cage in claim 1, but the PTO is clearly mistaken on this point. Tutelian's cage 31 does NOT meet the requirements of *the cage* as recited in claim 1.

It is also our view that there is nothing else, in Tutelian, that might be identified as meeting all the requirements of *the cage*, as recited in claim 1.

[008] Another point on which we might disagree with the PTO is as to the material of the floor of the cage 31, in Tutelian. The Tutelian floor material is stated (lines 49-53 of col 4) as being *fibreglass* -- which we will accept, for present purposes, as being a *plastic*.

Thus, the one feature of claim 1 that the PTO suggested was missing from the Tutelian apparatus, was that, in claim 1, the floor has to be made of plastic (see clause [16] of claim 1). Given that Tutelian actually does disclose a plastic floor, presumably the 35.U.S.C.103 obviousness rejection of claim 1 could or should have been a 35.U.S.C.102 anticipation rejection. In other words, there was no need to invoke the Weaver reference as a showing of a plastic floor to a poultry tray -- Tutelian shows that already.

[009] Clause [19] of claim 1 requires that the floor of our tray-chamber be so disposed in the support-framework that pools cannot form on the floor. We do not see this feature in Tutelian. As far as the skilled person would learn from the Tutelian disclosure, if liquid enters the Tutelian tray-chambers 31, pooling will occur. Certainly, Tutelian contains no hint that any measures have been taken to prevent pooling.

We note that the PTO has not suggested that our anti-pooling feature (clause [19]) is taught by Weaver. However, just in case the PTO might wish to suggest that Weaver teaches anti-pooling, we make the following comment. The skilled person would conclude, from a perusal of the Weaver patent, that

pooling might indeed occur, in Weaver -- not in the centre of the floor, of course, where the dome is located -- but perhaps pooling might occur, in Weaver, around the margins of the central dome.

[0010] We have explained in careful detail that claim 1 is distinguished from the Tutelian apparatus by two features, namely (1) that Tutelian does not disclose a plurality of separate individual cages, and (2) that Tutelian does not disclose any anti-pooling measures. The PTO appears to have missed, or to have ignored, both these distinguishing features.

These differences being present, the rejection of claim 1 cannot stand. It is our position that claim 1 is in order for allowance, and we look forward to being notified to that effect.

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Enclo: (none)